

# Housing and Property Chamber First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Decision: Housing (Scotland) Act 2006 Section 24 (1)**

**Chamber Ref: FTS/HPC/RP/19/0858**

**The Property: 37/2 Logie Green Road, Edinburgh EH7 4EY (“The house”)**

**The Parties:-**

**(“the Tenant”)**

**Mr William David Burns and Mrs Lorraine Burns, 24 Claremont Road, Edinburgh EH6 7NE  
(“the Landlord”)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’) in relation to the property, determined that the landlord had complied with the duty imposed by Section 14(1)(b) of the Act.

The tribunal consisted of –  
Mark Thorley, Legal Member,  
Robert Buchan, Ordinary Member

## **Background**

1. By application received on 14 March 2019 and received on 15 March 2019 the tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) following determination of whether the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 “the Act”.
2. The application stated that the landlord failed to comply with the duty to ensure the property meets the repairing standard and in particular the landlord had failed to ensure that –
  - (a) The window in the bedroom has had a “draught” which makes the bedroom severely cold.
  - (b) Within the bedroom the wall with the window/radiator and the wall opposite the bedroom door has been prone to dampness with consequent growth of black mould. The bottom of the cupboard in the bedroom shows signs of rising damp.
  - (c) In the external passageway the signs of water penetration/dampness on the concrete floor.
3. The application stated that the tenant considered that the landlord failed to comply with the duty to ensure that the property meets the repairing standard and in particular the landlord had failed to ensure that –
  - (a) The house is wind and watertight and in all other respects reasonably fit for human habitation (as required by Section 13(1)(a) of the Act);

- (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order (as required by Section 13(1)(b) of the Act);
  - (c) The house does not meet the repairing standard as required by Section 13(1)(h) of the Act.
4. The tenant left the property on 1 April 2019.
  5. The First-tier Tribunal determined by way of Minute of Continuation that the application should continue on 5 April 2019.
  6. The Tribunal served a notice of referral under and in terms of schedule 2, paragraph 1 of the Act upon the landlord and the landlord's agents on 16 April 2019. An inspection of the house and a hearing were assigned for 21 May 2019.
  7. The Tribunal inspected the property on the morning of 21 May 2019. The weather conditions were dry.
  8. The property is a ground floor flat within a tenement building. The property is accessed from the rear of the tenement. The tenant had vacated the premises. Present at the inspection were the Legal Member and the Ordinary Member together also with Mrs Lorraine Burns the landlord, and Ms Sharon Shanley of Shanley Lettings Ltd the landlord's representative.
  9. Following the inspection of the property the Tribunal held a hearing at the George House, 126 George Street, Edinburgh EH2 4HH. Again Mrs Burns and Ms Shanley attended.
  10. The tribunal considered the issues in the following order –
    - (a) The window in the bedroom having a draught.
 

The window appeared to be a new window. There appeared to be no “draught”.

The landlord had provided in advance a copy of a report from Aegis Property Care Ltd in which it was noted that the cause of the mould appeared to be condensation due to the lack of adequate heating and ventilation. Work had subsequently been undertaken.
    - (b) That dampness appeared in the bedroom.
 

On inspection meter readings taken from within the wardrobe, which backed onto the bathroom, showed high moisture content. It was indicated that work had been recently undertaken in the bathroom and that the bathroom was effectively “drying out”.
    - (c) The external passageway showed signs of water penetration/dampness.
 

On the date of inspection there were signs of damp in the communal wall and also on the floor. It was indicated that this dried out and that it was not always visible as damp.

## Determination

The hearing on 21 May 2019 was thereafter continued such that further information could be obtained by the landlord:-

- (a) That a further report from either Aegis Property Care Ltd or some other suitably qualified specialist should be instructed to examine what appears to be water penetration where the damp appears to arise potentially from the landlord's property.
- (b) That the works described in the report by Aegis Property Care Ltd dated 21 March 2019 insofar as relate to the bathroom and to the rear of the cupboard in the bedroom should be undertaken and in addition any additional works identified in the report be undertaken.
- (c) That following upon any works confirmation by way of written report, invoice or other correspondence should be produced showing that the works had been undertaken and completed.

### **Hearing: 16 July 2019**

1. On 16 July 2019 Mrs Burns attended along with Ms Shanley who represented her. At that stage it was indicated that Aegis had been to the property and had confirmed that all works necessary had been undertaken.
2. A further report was then provided by Aegis dated 15 July 2019.
3. The report confirmed that there was no evidence of mould growth in the bedroom. The moisture readings picked up in the lower right wall within the bathroom were caused by the misuse of non-porous plaster and plasterboard which had been removed and a "dri-coat" plaster had been applied to the walls there. Meter readings were noted on the walls but that it was expected that the plaster would take a number of months to dry out.
4. Slight moisture readings were noted on the right hand wall within the bedroom which is adjacent to the common stair however the cause of the moisture readings would appear to be due to a cold surface. There is no evidence of rising damp within these areas.

### **Summary of the issues**

The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

### **Findings in Fact**

1. The tribunal finds the following facts to be established –
  - (a) The tenant entered a short assured tenancy agreement with the landlord with a commencement date of 20 June 2017.
  - (b) The tenant no longer occupies the property.
  - (c) The landlord owns the property at 37/2 Logie Green Road, Edinburgh EH7 4EY.
  - (d) The tribunal carried out its inspection on 21 May 2019 and carefully checked the items which were the subject of the complaint and observed the following –
    - (i) There was no draught from the bedroom window.

- (ii) Although meter readings for dampness were higher than usual in the bedroom wardrobe the work had been undertaken within the bathroom and the matter resolved.
- (iii) Work had been undertaken in the bathroom by way of replastering.
- (iv) That any dampness in the internal passageway were not as a result of the property at 37/2 Logie Green Road, Edinburgh.

### Reasons for decision

1. The Tribunal noted that work had been undertaken to the property by the landlord. The Tribunal had determined to proceed with the application on the basis of the apparent significance of the issues as raised the issue of public interest in doing so.
2. The Tribunal noted the submissions made on behalf of the landlord.
3. The Tribunal noted the terms of the initial report by Aegis dated 21 March 2019 and the subsequent report dated 15 July 2019.
4. The Tribunal considered each of the complaints made.
5. The Tribunal accordingly determined that there was no failure to comply with the repairing standard in terms of Section 14(1)(b) of the Act.

### Decision

The tribunal accordingly determined that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

The decision of the tribunal was unanimous.

1. **In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision** of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

# M Thorley

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 chairperson  
 4/09/19 date